

**BEFORE THE WASHINGTON STATE  
UTILITIES AND TRANSPORTATION COMMISSION**

In the Matter of Determining the	)	DOCKET NO. TE-051140
Proper Carrier Classification of:	)	
	)	ORDER NO. 02
MARK R. OBTINARIO, d/b/a	)	
COWLITZ COACH	)	ORDER REQUIRING MARK R.
	)	OBTINARIO, D/B/A COWLITZ
	)	COACH TO CEASE AND DESIST
	)	FROM UNAUTHORIZED CHARTER
	)	PARTY OR EXCURSION SERVICE
	)	OPERATIONS

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**Synopsis:** *This Order proposes to enter a Cease and Desist Order requiring Mark R. Obtinario, d/b/a Cowlitz Coach to discontinue any unauthorized charter party or excursion service passenger transportation operations.*

- 1     **Proceedings.** On September 26, 2005, the Washington Utilities and Transportation Commission (Commission) convened a special proceeding, on due and proper notice,<sup>1</sup> pursuant to RCW 81.04.510, to determine whether Mark R. Obtinario, d/b/a Cowlitz Coach (Mark Obtinario), is operating as a charter party or excursion service for transportation of passengers for compensation without the certificate required for such operations by RCW 81.70.220.
  
- 2     **Appearances.** Chris Swanson, Assistant Attorney General, represents Washington Utilities and Transportation Commission Staff (Staff). No one appeared on behalf of Mark Obtinario.

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<sup>1</sup> On August 31, 2005 the Commission served a notice of this hearing on Mr. Obtinario. The certified mail copy was returned to the Commission as "unclaimed" but the first class mail copy was not returned. *See, Exhibit 12.* In addition, Staff testified that the notice of hearing was sent to the same email address where Staff had corresponded with Mr. Obtinario previously, and was faxed to the fax number on file with the Commission.

3     **Hearing.** Commission Staff presented the testimony of Betty Young, a Compliance Specialist with the Commission’s Business Practices Investigation Section. Ms. Young testified that in 2004 the Commission notified Mr. Obtinario of the fact that he had not filed the required proof of insurance coverage for his charter party and excursion service operation.<sup>2</sup> Ms. Young stated that because Mr. Obtinario failed to respond to this notification, the Commission first suspended his authority and then canceled it.<sup>3</sup> The Order canceling Mr. Obtinario’s certificate of operating authority was entered on January 7, 2005.<sup>4</sup>

4     Ms. Young further testified that in June 2005 Mr. Obtinario advertised on his computer website that “We still offer charter bus service from just about anywhere to just about anywhere.”<sup>5</sup> The Commission immediately sent a letter to Mr. Obtinario advising him that he might be operating illegally and asking him to respond with an explanation.<sup>6</sup> Ms. Young stated that Mr. Obtinario did not respond to the letter.

5     Ms. Young also testified that the Commission received a report that one of Mr. Obtinario's coaches bearing a “Cowlitz Coach” designation, was observed at Qwest Field in Seattle, Washington on July 3, 2005. Mr. Bruce Grim, a Law Enforcement Special Investigator in the Commission’s Motor Carrier Safety Section, conducted an investigation of this report.<sup>7</sup> During the investigation, Mr. Obtinario advised Mr. Grim that Mr. Obtinario had entered into a trip lease agreement with William M. Dunlop, d/b/a First Class Motor Coach in Oregon and had transported passengers from the Longview Senior Center in Longview, Washington to Seattle, Washington and back on July 3 under that agreement.<sup>8</sup>

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<sup>2</sup> Exhibit 1.

<sup>3</sup> Exhibits 2 and 3.

<sup>4</sup> Exhibit 3.

<sup>5</sup> Exhibit 4.

<sup>6</sup> Exhibit 5.

<sup>7</sup> Exhibit 6.

<sup>8</sup> Exhibit 6, ¶ 6.

- 6 Mr. Grim confirmed with Mr. Art Daily of the Longview Senior Center that Mr. Daily had hired Mr. Obtinario to provide transportation on July 3, 2005. However, when Mr. Grim contacted Mr. Dunlop, he found that Mr. Dunlop does not have Washington intrastate authority and had no knowledge of a purported trip lease to Mr. Obtinario.
- 7 On July 14, 2005, the Commission sent a letter to Mr. Obtinario advising him that his transport of passengers on July 3, 2005 was illegal and offered him a further opportunity to come into compliance with the law.<sup>9</sup> Ms. Young testified that Mr. Obtinario failed to respond to this letter.
- 8 On July 18, 2005, the Commission served on Mr. Obtinario a notice of penalties in the amount of \$4,000, citing his July 3, 2005 unauthorized transportation of passengers from Longview to Qwest Field.<sup>10</sup>
- 9 The Commission ultimately reached Mr. Obtinario by email in August 2005 and he agreed to send a letter stating that he would stop his charter and excursion operations until he first obtained proper operating authority.<sup>11</sup> However, Ms. Young stated that the Commission never received such a letter from Mr. Obtinario. She testified that as of September 23, 2005, Mr. Obtinario's website still showed that he was offering transportation service to the public.
- 10 **Discussion and decision.** RCW 81.70.220 provides that no person may conduct charter party or excursion service transportation of passengers without a certificate of authority from the Commission. The primary reason for this requirement is to ensure the safety of the traveling public by preventing carriers who lack insurance or whose vehicles and drivers are not operating safely from providing transportation service. The Commission may enter a cease and desist order when, after proper notice and a hearing, it is shown that a company whose

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<sup>9</sup> Exhibit 8.

<sup>10</sup> Exhibit 9.

<sup>11</sup> Exhibits 10-11.

operations require Commission authority has been operating without that authority.<sup>12</sup> In addition, an Administrative Law Judge may resolve a case without further notice or hearing when a party fails to appear at a hearing, such as the one held in this case, for which proper notice has been provided.<sup>13</sup>

- 11 In this case, it is evident that Mr. Obtinario provided transportation of the type that requires Commission authority. He transported passengers in a bus operated by his company on a trip to Seattle on July 3, 2005. Mr. Obtinario's certificate of authority to conduct such operations was canceled in January 2005. Commission Staff contacted him directly about the illegal July 2005 operation and he responded that he was aware of it. However, he never filed a written response and never pursued action that would bring him into compliance with the law. Under these circumstances, entry of a Cease and Desist Order is clearly warranted. Moreover, because Mr. Obtinario failed to appear at the hearing, he should be found in default.

### FINDINGS OF FACT

- 12 (1) The Washington Utilities and Transportation Commission has jurisdiction over the parties and subject matter of this proceeding.
- 13 (2) The Commission may enter Cease and Desist Orders when it finds that a company that is required to have a certificate of authority to operate as a transportation company is operating without such a certificate.

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<sup>12</sup> RCW 81.04.510.

<sup>13</sup> The Order, Subpoena and Notice of Hearing issued by the Commission on August 31, 2005 provided that if Mr. Obtinario failed to appear at the hearing he may be held in default. *See, Order No. 01, August 31, 2005, ¶ 10; see, also RCW 34.05.440(2).*

- 14 (3) The Commission canceled Mark Obtinario's authority to operate as a charter party and excursion service passenger carrier under Certificate No. CH-417 on January 7, 2005.
- 15 (4) On July 3, 2005 Mr. Obtinario provided transportation without the required operating authority from the Commission when he provided charter or excursion passenger transport from Longview, Washington to Seattle, Washington.

### CONCLUSIONS OF LAW

- 16 (1) Mark Obtinario violated RCW 81.70.220 when he carried passengers without proper authority from the Commission on July 3, 2005.
- 17 (2) Mark Obtinario's failure to appear at the September 26, 2005 hearing to determine whether the Commission should issue a Cease and Desist Order constitutes a default under RCW 34.05.440 and WAC 480-07-450.
- 18 (3) A Cease and Desist Order should be entered.

### ORDER

- 19 THIS ORDER RECOMMENDS That Mark Obtinario should be ordered to cease and desist from unauthorized charter party and excursion service passenger transportation in the state of Washington.

DATED at Olympia, Washington, and effective this 5<sup>th</sup> day of October, 2005.

WASHINGTON UTILITIES AND TRANSPORTATION COMMISSION

THEODORA M. MACE  
Administrative Law Judge